**IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**

**Arbitration Case No. 39 of 2005**
**Date of Decision: 23.03.2007**

**The Meham Co-operative Sugar Mills Ltd. Meham**

**.....Petitioner through**
**Mr. Gobind Goel,**
**Advocate**

**versus**

**M/s National Heavy Engineering Co-operative Ltd.**

**.....Respondent through**
**Mr. Raman Mahajan,**
**Advocate**

**CORAM: HON'BLE MR. JUSTICE VIJENDER JAIN, CHIEF JUSTICE**

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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**Vijender Jain, Chief Justice (Oral)**

Learned counsel for the petitioner has contended that there is an admitted arbitration clause 19 of the agreement between the parties which reads as under:-

> *"If at any time, there should be any question, dispute or difference between the parties in respect of any matter arising out of or in relation to this agreement either party may give to the other party notice in writing of the existence of such question, dispute or difference and the same shall be referred to the arbitration of a single arbitrator when the parties may agree upon, otherwise to two arbitrators one to be nominated by each party. The arbitrators shall before proceedings with the reference, nominate an umpire to act in case of dis-agreement. The award of the Arbitrators shall be final and binding on the parties and be accepted by them. This reference, to the arbitrators shall be deemed to be a reference, under the provisions of the Indian Arbitration Act, 1940 and the rules made thereunder and any statutory modifications or reenactments thereof that may be made from time to time and actually in force at the time of the reference. The cost of arbitration shall be borne by the parties as may be decided upon by the Arbitrators or the umpire as the case may be. However, venue shall be the Head Quarters of the Haryana State Federation of Co-operative Sugar Mills Ltd."*

It is further contended that on 13.07.1994, the petitioner invoked the arbitration clause and appointed Registrar, Co-operative Societies, as an Arbitrator, on behalf of the petitioner. The respondent replied to the invocation letter of the petitioner vide his letter dated 27.07.1994 and did not agree to the appointment of the Registrar, Co-operative Societies, as sole Arbitrator. The petitioner waited for considerable long time and again on 4.1.1997 requested the respondent to appoint an Arbitrator while appointing the Registrar, Co-operative

Societies, as an Arbitrator from its side. On 18.01.1997, the respondent replied to the petitioner taking the stand that they are holding their Board of Directors meeting and they will nominate an Arbitrator from their side. As nothing was done from the side of the respondent, the petitioner approached the Court of competent jurisdiction on 18.11.1997, for appointment of an Arbitrator/Tribunal.

Learned counsel for the respondent has contended that the agreement between the parties for supply of equipment's and machinery for the sugar plant was executed on 22.5.1989, the due date for commissioning of plant was extended upto 25.3.1991. The plant was commissioned and it was commissioned on 24.3.1991. Therefore, the invocation of the arbitration clause on 13.7.1994 was beyond the period of limitation.

I have given my careful consideration to the arguments advanced by learned counsel for both the parties.

In view of the fact that in relation to the letter invoking the arbitration clause on 13.7.1994, the respondent has specifically taken the plea that they did not agree to the appointment of Registrar, Co-operative Societies, as an Arbitrator, and no plea of limitation was taken by them. Even subsequently, when the petitioner had appointed again Registrar, Co-operative Societies, as an Arbitrator on 4.1.1997, a plea was taken by the respondent that they are having their Board of Directors meeting and in that meeting, they will decide about the supply of vacancy from their side, therefore, the plea taken today by the respondent regarding limitation at this stage is an after thought.

In the circumstances, as the respondent has failed to supply the vacancy, I appoint Hon'ble Mr. Justice Amarjit Chaudhary, a retired Judge of this Court, to adjudicate the dispute between the parties. The Arbitrator shall fix his own fee.

Parties are directed to appear before the Arbitrator on 28.04.2007 at 4.00 P.M.

The petition stands disposed of.

Intimation regarding appointment of as an Arbitrator in this petition be sent to Hon'ble Mr. Justice Amarjit Chaudhary, a retired Judge of this Court, forthwith.

**(VIJENDER JAIN)**
**CHIEF JUSTICE**

**23.03.2007**
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